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TO RUEHC/SECSTATE WASHDC IMMEDIATE 2023  
INFO RHHMUNA/CDRUSPACOM HONOLULU HI IMMEDIATE  
RUEKJCS/JOINT STAFF WASHINGTON DC IMMEDIATE  
RUEKJCS/SECDEF WASHDC IMMEDIATE

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TAGS: [PREL](#) [MARR](#) [KCRM](#) [CASC](#) [RP](#)  
SUBJECT: MARINE CASE UPDATE 07/14/06

REF: MANILA 2852 AND PREVIOUS

¶1. The trial of four Marines accused of raping a Filipino woman continued during the week of July 14 with direct and cross examination of the complainant as well as of the prosecution's chief medical witness, Dr. Raquel del Rosario-Fortun. Prosecutors established how much the complainant drank before the alleged incident, and that she intermittently experienced memory black-outs before, during, and after the incident allegedly took place. In further testimony mainly for the expected civil damages aspect of the case, she recounted the destitution she and her family have endured since the incident. She broke down in tears repeatedly, causing numerous short recesses. LCpl Smith's defense attorney Patricia Formoso successfully established during cross examination that the complainant had re-entered the Neptune Club after the incident and did not tell the club's security guard working the door that night that she had just been raped.

¶2. In an incident that garnered considerable media attention, the complainant on Monday, July 10 fell upon re-entering the court from a recess while passing LCpl Smith. She blamed him for tripping her and then repeatedly hit him with her handbag until others subdued her. This took place before Judge Pozon had entered court, yet in front of the press that had already assembled in the gallery. None of the defendants nor Embassy officials present nearby have any reason to believe that LCpl Smith had indeed tripped her; she has fallen at least once before in an unrelated incident.

¶3. The complainant's mother, who is expected to testify next week regarding the emotional and financial decline of her family apparently to bolster claims for civil damages, also repeatedly berated the defendants in court. In another incident that attracted media attention, a prominent Filipina who was observing the trial berated one defendant for allegedly laughing during the complainant's testimony. According to our observers, this defendant was in fact joking with his attorney about a non-trial-related issue during a recess when the confrontation took place.

¶4. The prosecution's chief medical witness, Dr. Fortun, testified that the complainant's injuries were consistent with sexual assault and evaluated possible causes as to why no trace of semen was found anywhere. Dr. Fortun spent much of her testimony reading excerpts from reference materials to bolster her interpretation. The defense questioned her credibility, and established that she never personally examined the complainant or the evidence, only interviewing her before the trial began. They also focused on getting Dr. Fortun to admit to alternative explanations for physical contusions on the complainant.

¶5. The van driver Timoteo Soriano is expected to testify again during the week of July 17. The public prosecutor has

stated that there will then be five more prosecution witnesses, and that the prosecution would rest the case in two weeks.

16. The Mission's working group established that Judge Pozon can indeed render both a criminal and civil verdict at the completion of this trial. It also agreed to provide certified copies of the U.S.S. Essex' ship logs, per the request of the prosecution (NOTE: The prosecution already has copies of these logs but now want a new set certified for unknown reasons. END NOTE). According to PAS and III MEF officials, the defendants and their defense counsels have so far not accepted, nor indicated an interest in accepting, any additional requests for media interviews.

17. Mission continues to provide security, citizen services, and other support to the Marines. Personnel from III MEF, JUSMAG, Regional Security Office (RSO), and the Consular Section continue to attend all court sessions. RSO remains pleased with the extent and quality of security support provided by the mayor's office and police department.  
Kenney